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H.B. 1
133rd General Assembly

Bill Analysis

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Version: As Reported by Senate Judiciary

Primary Sponsors: Reps. Plummer and Hicks-Hudson

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SUMMARY

- Broadens the scope of continuing law intervention in lieu of conviction (ILC) by requiring an eligibility hearing on an application for intervention in any case in which the offender alleges that drug or alcohol usage was a factor leading to the underlying offense.
- Narrows the scope of continuing law ILC by making an offender charged with a felony sex offense ineligible for ILC.
- Modifies the type of record sealing that may be granted under an ILC order.
- Broadens the application of the continuing Conviction Record Sealing Law by removing the cap, currently based on total felony convictions, on eligibility for fourth or fifth degree felony and misdemeanor offenses, and by raising the caps on restricted felony and misdemeanor offenses.
- Modifies the time at which an offender may apply to have a conviction record sealed.
- Specifies that \$15 of the \$30 portion of the conviction record sealing application fee that is paid into the State Treasury must be credited to the Attorney General Reimbursement Fund, for use by the Bureau of Criminal Identification and Investigation for expenses related to the sealing or expungement of records.

DETAILED ANALYSIS

Intervention in lieu of conviction – drug or alcohol usage a factor

The bill broadens the scope of the continuing law “intervention in lieu of conviction” (ILC) program to require the court, at a minimum, to hold an eligibility hearing for each application for ILC that alleges that drug or alcohol usage by the applicant offender was a factor

leading to the underlying criminal offense. For applications alleging a different authorized basis, as under current law, the court may reject the application without a hearing.¹ The bill also requires the court, in making a decision as to whether to grant ILC at the conclusion of a hearing on an ILC petition alleging any of the authorized bases for the ILC, to presume that ILC is appropriate and, unless the court finds specific reasons to believe that the candidate's participation in ILC would be inappropriate, to grant the ILC. If the court denies an eligible offender's request for ILC, the court must state the reasons for denial, with particularity, in a written entry.² For applications that are approved, the bill caps the mandatory terms of the intervention plan established for the offender granted the ILC at no more than five years. Continuing law requires every intervention plan to impose certain mandatory terms and conditions and authorizes every plan to include any other treatment or community control-like terms and conditions ordered by the court. The mandatory terms and conditions must require the offender to do all of the following for at least one year from the date the court grants ILC:³

- Abstain from the use of illegal drugs and alcohol;
- Participate in treatment and recovery support services;
- Submit to regular random drug and alcohol testing.

The bill also narrows the scope of ILC eligibility by making an offender charged with a felony sex offense (defined as a violation of a prohibition in R.C. Chapter 2907 that is a felony) ineligible for ILC. Continuing law already prohibits an offender charged with a first, second, or third degree felony or an offense of violence, as well as certain other categories of offenders, from being eligible.⁴ Other categories of offenders who are ineligible for ILC include offenders who: previously were convicted of a felony offense of violence; are charged with a specified drug offense in specified circumstances; committed the offense against an alleged victim who was age 65 or older or under age 13, was permanently and totally disabled, or was a peace officer engaged in official duties; or are not willing to comply with all terms and conditions the court imposes.⁵

Intervention in lieu of conviction procedures and outcomes

Under continuing law, if an offender is charged with a criminal offense and the court has reason to believe that drug or alcohol usage by the offender was a factor leading to the offense, or that the offender had a mental illness, was a person with an intellectual disability, or was a victim of the offense of trafficking in persons or of compelling prostitution and the mental health issue or victimization was a factor leading to the offender's criminal behavior, the court

¹ R.C. 2951.041(A)(1).

² R.C. 2951.041(C).

³ R.C. 2951.041(D).

⁴ R.C. 2951.041(B)(2) and (G)(8).

⁵ R.C. 2951.041(B)(1) and (B)(3) to (10).

may accept, prior to the entry of a guilty plea, the offender's request for ILC. The procedures regarding a rejection of a request without a hearing, or the conduct of a hearing upon a request, are modified by the bill as described above. Under continuing law, if a request is approved by the court, the court must accept the offender's plea of guilty and waiver of rights to a speedy trial, preliminary hearing, time period for consideration of an indictment, and arraignment. The court then may stay all criminal proceedings, order the offender to comply with the terms and conditions of a court-ordered intervention plan, and place the offender under a specified type of supervision. If the court finds that the offender has successfully completed the intervention plan, the court must dismiss the proceedings against the offender with no adjudication of guilt or criminal conviction. Under current law, the court may order that records related to the offense in question be sealed under the Conviction Record Sealing Law – the bill modifies this provision to instead specify that the court may order that records related to the offense in question be sealed under the Not Guilty/Dismissed Charges/No Bill Record Sealing Law.⁶

Sealing a record of conviction

Expansion of eligible offenders

The bill expands the Conviction Records Sealing Law⁷ so that more offenders are eligible to have their conviction records sealed.

First, the bill eliminates a cap, currently based on the total number of felony convictions, on the number of fourth and fifth degree felony convictions and misdemeanor convictions that an offender is eligible to seal. Under current law, an offender convicted of one or more offenses, all of which are fourth or fifth degree felonies or misdemeanors and are not offenses of violence or felony sex offenses, generally is eligible to have the record of those convictions sealed, but if the offender has been convicted of more than five felonies of any degree, the offender is not eligible under the provision to have the record of any of the convictions sealed. Under the bill, there is no cap on the total number of felony convictions that determine an offender's eligibility – as a result, under the bill, anyone who has been convicted of one or more offenses is eligible to have the records of those convictions sealed if all of the offenses are fourth and fifth degree felonies or misdemeanors and none of them are offenses of violence or felony sex offenses.⁸

The bill also expands the alternative sealing eligibility provision that currently provides that an offender to whom the above eligibility provision does not apply is eligible to have sealed one felony conviction, up to two misdemeanor convictions, or one felony conviction and one misdemeanor conviction. Under the bill, a person who cannot utilize the above sealing

⁶ R.C. 2951.041; the Not Guilty/Dismissed Charges/No Bill Record Sealing Law is located in R.C. 2953.51 to 2953.56, not in the bill.

⁷ R.C. 2953.31 to 2953.36, not in the bill except for R.C. 2953.31 and 2953.32.

⁸ R.C. 2953.31(A)(1)(a).

eligibility provision is eligible to have sealed not more than two felony convictions, not more than four misdemeanor convictions, or, if the person has exactly two felony convictions, has not more than those two felony convictions and two misdemeanor convictions. The bill specifies that the conviction that is requested to be sealed must be one that is not ineligible for sealing under continuing law, as described in the next paragraph.⁹

The following criminal records may not be sealed under continuing law:¹⁰

- Convictions when the offender is subject to a mandatory prison term;
- Convictions for rape, sexual battery, unlawful sexual conduct with a minor, gross sexual imposition, sexual imposition, pandering obscenity involving a minor, pandering sexually oriented material involving a minor, illegal use of a minor in a nudity-oriented material or performance, or various traffic laws;
- Convictions of an offense of violence when the offense is a first degree misdemeanor or felony and is not a first degree misdemeanor riot, assault, or inciting to violence, or inducing panic offense;
- Convictions on or after October 10, 2007, of importuning or a municipal ordinance similar to that offense;
- Convictions on or after October 10, 2007, of voyeurism, public indecency, compelling prostitution, promoting prostitution, procuring, disseminating matter harmful to juveniles, displaying matter harmful to juveniles, pandering obscenity, or deception to obtain matter harmful to juveniles when the victim was a person under 18 years old;
- Convictions of a first degree misdemeanor or felony offense against a victim who was 16 years old or younger, other than convictions for nonsupport or contributing to nonsupport of dependents;
- Convictions for first degree felonies or second degree felonies;
- Bail forfeitures in traffic cases.

Timing of application

The bill modifies the time at which an offender may apply to have a record sealed under the Conviction Record Sealing Law, such that an offender convicted of a third degree felony may apply at the expiration of three years after the offender's final discharge, and an offender convicted of a fourth or fifth degree felony or a misdemeanor may apply at the expiration of one year after final discharge.¹¹

⁹ R.C. 2953.31(A)(1)(b).

¹⁰ R.C. 2953.36, not in the bill.

¹¹ R.C. 2953.32(A)(1)(a) and (b).

Under current law, application may be made at one of the following times:¹²

- At the expiration of three years after the offender's final discharge if convicted of one felony;
- If the offender has been convicted of one or more offenses, but not more than five felonies, that are fourth or fifth degree felonies or misdemeanors and none of which are an offense of violence or a felony sex offense, at the expiration of four years after the offender's final discharge if convicted of two felonies, or at the expiration of five years after final discharge if convicted of three, four, or five felonies;
- At the expiration of one year after the offender's final discharge if convicted of a misdemeanor.

Fees for sealing application – Attorney General Reimbursement Fund

Current law specifies that an applicant for conviction record sealing may request the sealing of the records of more than one case in a single application and that, upon the filing of an application, the applicant, unless indigent, must pay a fee of \$50, regardless of the number of records the application requests to have sealed. Of the fee paid, the court must pay \$30 into the State Treasury, and \$20 into the county general revenue fund if the sealed conviction or bail forfeiture was pursuant to a state statute or into the general revenue fund of the municipal corporation involved if the sealed conviction or bail forfeiture was pursuant to a municipal ordinance. The bill modifies this to specify that \$15 of the \$30 paid into the State Treasury must be credited to the Attorney General Reimbursement Fund.¹³

Current law has created in the State Treasury the Attorney General Reimbursement Fund, which must be used for the expenses of the office of the Attorney General in providing legal services and other services on behalf of the state. All amounts received by the Attorney General (the AG) as reimbursement for legal services and other services that have been rendered to other state agencies must be paid into the State Treasury to the credit of the fund, and all amounts awarded by a court to the AG for attorney's fees, investigation costs, expert witness fees, fines, and all other costs and fees associated with representation provided by the AG or awarded to the AG by a court must be paid into the State Treasury to the credit of the fund. The bill expands this law to also specify that all amounts paid into the State Treasury under the bill's provision described in the preceding paragraph and that are required under that provision to be credited to the fund must be credited to the fund, and the amounts so credited must be used by the Bureau of Criminal Identification and Investigation for expenses related to the sealing or expungement of records.¹⁴

¹² R.C. 2953.32(A)(1)(a), (b), and (c).

¹³ R.C. 2953.32(C)(3).

¹⁴ R.C. 109.11.

HISTORY

Action	Date
Introduced	05-21-19
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